# National Labor Relations Board Wookly Summary



# Weekly Summary of NLRB Cases

Division of Information	Washington, D.C. 20570	Tel. (202) 273-1991	
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**CORRECTION:** In the last issue (W-3217), the summary of *Jackson Hospital Corp. d/b/a Kentucky River Medical Center*, 354 NLRB No. 42, last sentence should read – Adm. Law Judge Michael A. Rosas issued his supplemental decision Feb. 26, 2008.

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International Brotherhood of Electrical Workers, Local 71 (8-CD-504; 354 NLRB No. 46) Stow, OH, July 14, 2009. The Board denied Operating Engineers' motion to quash and found that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act had been violated and that there were competing claims to the work in dispute. The Board found that Operating Engineers made direct claim to the Employer for the work in dispute, and that the instant case is distinguishable from Capitol Drilling Supplies, 318 NLRB 809 (1995). The Board found that the work should be awarded to employees represented by Electrical Workers based upon the factors of: certifications and collective-bargaining agreements; employer preference and past practice; area and industry practice; relative skill; and economy and efficiency of operations. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

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Legacy Health System (36-CA-10299; 354 NLRB No. 45) Portland, OR, July 13, 2009. The Respondent operates a large health care system that employs approximately 9,000 employees at five hospitals, a research facility, and several clinics and labs. Different unions, including the Charging Party Union, represent various units of employees at the Respondent's multiple facilities. [HTML] [PDF]

The Respondent maintained a policy (the policy) that prohibited employees from holding dual part-time jobs - - one job in a unit represented by a union and the other job not represented by a union. Three part-time employees covered by a collective bargaining agreement between the Charging Party and the Respondent applied for second part-time jobs outside their bargaining unit which were not union-represented positions. Each was denied the positions for the stated reason that the Respondent's policy prohibited employees from holding concurrent union and nonunion jobs.

The administrative law judge found that the policy violated Section 8(a)(3) and (1) of the Act by discriminating on the basis of Section 7 considerations in refusing to hire the three employees for the nonunion positions. The judge found the policy was "inherently destructive" of the employees' Section 7 rights under the theory of *NLRB v. Great Dane Trailers*, 388 U.S. 26, 33-34 (1967).

The Board adopted the judge's finding of the Section 8(a)(3) and (1) violation, but did not rely on the "inherently destructive" standard of *Great Dane*. Instead, the Board relied on the "comparatively slight" standard of *Great Dane* which holds that if discriminatory conduct has a comparatively slight impact on employees' Section 7 rights, a violation will be found unless the respondent can establish a legitimate and substantial business justification for its conduct.

The Respondent's business justification defense was that the policy was necessary to avoid "legal uncertainties" that would arise if it permitted dual employment in a unit and nonunit position. The asserted legal uncertainties included such questions as whether an employee working both a unit and nonunit job would be covered by a particular collective bargaining

agreement's overtime, disciplinary, and grievance provisions. The Board rejected this defense based on its finding that the same legal uncertainties would arise if an employee worked two unit jobs covered by separate collective bargaining agreements, but that the Respondent does not prohibit such employment.

Accordingly, having failed to establish a legitimate and substantial business justification for its discriminatory hiring policy under the "comparatively slight" standard of *Great Dane*, the Board affirmed the judge's finding of a violation.

(Chairman Liebman and Member Schaumber participated.)

Charge filed by Service Employees Local 49; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Portland on Dec. 9, 2008. Adm. Law Judge Gerald A. Wacknov issued his decision Feb. 11, 2009.

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Metro Demolition Contracting Corp., Phantom Demolition Corp., Circle Interior Demolition Inc., World Class Demolition Corp., alter egos (29-CA-27317 et al.; 354 NLRB No. 48)

Maspeth, NY, July 16, 2009. Granting in part and denying in part the General Counsel's motion for summary judgment, the Board concluded that the allegations in the compliance specification regarding the identity of the discriminatees, the backpay period, and the computation of backpay and fund contributions were admitted as true, but that the Respondents had sufficiently answered an allegation concerning payments of liquidated damages for delinquent fund payments.

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The Board had previously issued an unpublished order adopting in the absence of exceptions an administrative law judge's order requiring the Respondents to make unit employees whole for losses suffered as a result of their unlawful discharges, and to give retroactive effect to the applicable collective-bargaining agreement.

In this supplemental decision, the Board found that the Respondents offered general denials to the compliance specification's allegations concerning the identity of the discriminatees and backpay and fund contribution computations. The Board added that these matters were clearly within the Respondents' knowledge and that the Respondents' answer did not furnish supporting figures or fully set forth their positions regarding the applicable premises. For these reasons, the Board found that their answer was inadequate under the Board's Rules and Regulations.

However, the Board found that summary judgment was not warranted with respect to the Respondents' answer to the compliance specification's allegation concerning payments of liquidated damages. Specifically, the Board found that, unlike the answers to the other allegations, the Respondents' answer to this allegation set forth a basis for their denial, i.e., that liquidated damages "were discretionary" and "only imposed after arbitration." Noting that the

compliance specification did not set forth the terms of the applicable section of the collective-bargaining agreement, the Board found in these circumstances that the Respondents' answer sufficiently raised a litigable issue of fact.

(Chairman Liebman and Member Schaumber participated.)

General Counsel filed motion for partial summary judgment on Dec. 15, 2008.

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Operative Plasterers' & Cement Masons' International Assn., Local 262 (29-CD-630; 354 NLRB No. 47) Farmingdale, NY, July 15, 2009. This case involved a jurisdictional dispute under Section 10(k) of the Act. The work in dispute included all Exterior Insulation and Finish System (EIFS) work being performed at the Jamaica Hospital and the Bronx Terminal Market in New York. The Board found that there was reasonable cause to believe that Section 8(b)(4)(D) had been violated, that there were competing claims to the work in dispute, and that there was no agreed-upon method for voluntary adjustment of the dispute to which all parties were bound. The Board awarded the work in dispute to employees represented by International Union of Bricklayers & Allied Craftworkers, Local 1 (Bricklayers), rather than to employees represented by Operative Plasterers' & Cement Masons' International Association, Local 262 (Plasterers), based on the factors of collective-bargaining agreements, employer preference and past practice, relative skills, and economy and efficiency of operations. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

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#### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Hospital San Carlos, Inc. d/b/a Hospital San Carlos Borromeo (Unidad Laboral de Enfermeras (OS) y Empleados de la Salud) Moca, PR, July 15, 2009. 24-CA-11093; JD(ATL)-14-09, Judge William N. Cates.

*UL Mgmt. a/k/a Union Labor Maintenance Inc.* (Service Employees Local 32BJ) Cranford, NJ, July 15, 2009. 22-CA-28415; JD(NY)-29-09, Judge Mindy E. Landow.

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### LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following case, the Board granted request for review of Decision and Direction of Election (D&DE) and Decision and Order (D&O) of Regional Director)

## CORRECTED ORDER [remanding case to Regional Director for further appropriate action]

Phoenix Energy Mgmt., Inc., Brooklyn, NY, 29-RC-11728, July 17, 2009 (Chairman Liebman and Member Schaumber)

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(In the following case, the Board denied request for review of Decision and Direction of Election (D&DE) and Decision and Order (D&O) of Regional Director)

Holy Rosary Healthcare, Miles City, MT, 27-RC-8554, July 16, 2009 (Chairman Liebman and Member Schaumber)

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#### Miscellaneous Board Decisions and Orders

ORDER [denying Union's motion to accept late documents]

Stericycle, Inc., San Leandro, CA, 32-RC-5603, July 16, 2009

**ORDER** [denying Employer's request for permission to file special appeal]

Kindred Healthcare, Inc., Albuquerque, NM, 28-RC-6644, July 16, 2009

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